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DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 97-0157 & 97-0159 ST
Sales and Use Tax
For The Tax Periods: 1993 through 1995

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ISSUE

Sales/Use Tax: Purchases of Food for Human Consumption

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2, IC 6-2.5-5-20, *Hyatt Corp. v. Indiana Department of State Revenue* No. 49T10-9601-TA-00001 (Ind.TaxCt. 1998)

Taxpayer protests the assessment of sales/use on purchases of food for a guest's gratuitous breakfast.

STATEMENT OF FACTS

Taxpayer is a hotel that is in the business of providing hotel accommodations to its customers. Taxpayer does not provide restaurant services to its customers. Taxpayer purchases unprepared foods in order to prepare and serve complimentary meals to guests.

DISCUSSION

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC 6-2.5-3-2, "an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction."

IC 6-2.5-5-20 provides that purchases of food for human consumption are not subject to sales and use tax. The statute provides a non-exhaustive list of foods that are exempt and foods that are not exempt from tax. In *Hyatt Corp. v. Indiana Department of State Revenue* No. 49T10-9601-TA-00001 (Ind.TaxCt. 1998), the court held that purchases of food for human consumption by a hotel to be given away were exempt from use tax pursuant to IC 6-2.5-5-20. The court reasoned that because none of the exclusions are applicable, Hyatt's food purchases fall squarely under the exemption provision at issue. Therefore, under the plain language of the exemption provision, Hyatt's food purchases are not taxable.

The taxpayer's purchases of food for human consumption are analogous to the purchases that were found to be exempt in *Hyatt*. Therefore, the taxpayer is not liable for use tax assessed on its purchases of food for human consumption.

FINDING

Taxpayer's protest is sustained.